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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

AP Southwest, LLC, an Arizona limited
liability company,

Plaintiff,

v.

Capital Trust Funding, Inc., a Colorado
corporation, Dean Kennedy, a/k/a Steven
Dean Kennedy, an individual, Mark T.
Creighton, an individual, John Does 1-10.

Defendants.

NO.

COMPLAINT

(Jury Trial Demanded)

Plaintiff AP Southwest, LLC (“AP Southwest”) by and through its undersigned counsel, for its Complaint against Defendants Capital Trust Funding, Inc. alleges as follows:

Parties, Jurisdiction and Venue

1. Plaintiff AP Southwest is an Arizona limited liability company. AP Southwest is registered to transact business, and does transact business, in Arizona.

2. AP Southwest transacts business under the name “Adolfson & Peterson Construction” in the state of Arizona.

3. AP Southwest has a single member, Adolfson & Peterson, Inc.

4. Adolfson & Peterson, Inc. is a Minnesota corporation with its principal place of business in Minneapolis, Minnesota.

1 26, 2012 (the “Deposit Agreement”). A true and correct copy of the Deposit Agreement
2 is attached hereto as **Exhibit 1**.

3 16. Pursuant to the Deposit Agreement, AP Southwest entrusted the sum of
4 \$200,000.00 to Capital Trust.

5 17. The funds were intended to be used for a short term investment.

6 18. To induce AP Southwest to entrust its funds, Capital Trust furnished AP
7 Southwest with a guaranty as part of the Deposit Agreement.

8 19. The Deposit Agreement afforded AP Southwest with the right, five days
9 after making the investment, to inspect the progress of the investment.

10 20. To that end, on August 9, 2012, Capital Trust, through its agent, informed
11 AP Southwest that the investment had “done very well” and that the funds were
12 “compounding.”

13 21. Five days after that assurance, on August 14, 2012, AP Southwest exercised
14 its rights under the Deposit Agreement and gave instructions to Capital Trust to terminate
15 the investment. A true and correct copy of AP Southwest’s written demand to return the
16 funds is attached hereto as **Exhibit 2**.

17 22. Capital Trust, through its agents, assured AP Southwest that the monies
18 were available and would be returned to AP Southwest’s account.

19 23. Those representations were false.

20 24. Despite AP Southwest’s instructions, and Capital Trust’s assurances, Capital
21 Trust has failed to return the funds. The entire amount entrusted to Capital Trust -
22 \$200,000.00 – remains outstanding and unpaid.

23 25. Since that time AP Southwest has learned of other fraud actions involving
24 Mr. Kennedy, including a pending case in the United States District Court for the District
25 of New Jersey, 10-CV-06237.

26 26. AP Southwest credibly believes, therefore that its funds were solicited and
27 converted to the use of the Capital Trust Defendants, and others, as part of an “Advance
28 Fee Fraud.”

FIRST CLAIM FOR RELIEF

**Breach of Contract
(Against Capital Trust)**

27. AP Southwest realleges and incorporates by reference the allegations set forth in each of the above paragraphs.

28. The Deposit Agreement is a valid and binding agreement and AP Southwest has fulfilled all obligations thereunder.

29. Capital Trust has breached its obligations in the Deposit Agreement by failing to return the amount of AP Southwest's invested funds.

30. AP Southwest has suffered damages as a result of Capital Trust's breach, including the loss of its \$200,000.00 investment, plus the damages flowing from the loss of the use of those funds, and the benefits AP Southwest expected from the Deposit Agreement.

31. AP Southwest is entitled to recover its damages, plus its attorneys' fees and costs incurred in connection with this litigation as this claim arises out of contract, pursuant to A.R.S. § 12-341.01.

SECOND CLAIM FOR RELIEF

**Breach of the Implied Covenant of Good Faith and Fair Dealing
(Against Capital Trust)**

32. AP Southwest realleges and incorporates by reference the allegations set forth in each of the above paragraphs.

33. Implied in every contract is a covenant of good faith and fair dealing. The implied covenant of good faith and fair dealing prohibits a party from doing anything to prevent other parties to a contract from receiving the benefits and entitlements of the agreement.

34. AP Southwest entered binding contractual agreements with the Capital Trust Defendants. By virtue of those agreements, the Capital Trust Defendants owed a duty to act in good faith toward, and fairly deal with, AP Southwest with respect to the invested funds.

38. In addition, AP Southwest is entitled to recover its attorneys' fees and costs incurred in connection with this litigation, as this claim arises out of contract, pursuant to A.R.S. § 12-341.01.

THIRD CLAIM FOR RELIEF
Fraudulent Misrepresentation
(Against the Capital Trust Defendants)

43. AP Southwest relied on the Capital Trust Defendants' representations regarding the placement of the investment, and Capital Trust's ability to guarantee repayment, which caused AP Southwest to entrust its funds to Capital Trust.

47. In addition to its actual damages, AP Southwest is entitled to punitive damages in an amount necessary to deter the Capital Trust Defendants and others from engaging in such conduct in the future.

FOURTH CLAIM FOR RELIEF
Conversion
(Against the Capital Trust Defendants)

52. Despite AP Southwest's repeated demands, Capital Trust has failed and refused to return AP Southwest's investment, and/or account for the disposition and status of the funds.

1 53. Upon information and belief, those funds are segregated and/or traceable
2 in a form of account.

3 54. Upon information and belief, Defendant Capital Trust, and Defendants
4 Creighton and Kennedy, have personally benefited from the conversion of AP
5 Southwest's funds.

6 55. Moreover, the Capital Trust Defendants' actions in converting AP
7 Southwest's funds were malicious and intentional, thereby entitling AP Southwest to
8 punitive damages in an amount necessary to deter the Capital Trust Defendants and
9 others from engaging in such conduct in the future.

10
11 **FIFTH CLAIM FOR RELIEF**
12 **Unjust Enrichment**
13 **(Against the Capital Trust Defendants)**

14 56. AP Southwest realleges and incorporates by reference the allegations set
15 forth in each of the above paragraphs.

16 57. By retaining the AP Southwest's \$200,000.00 investment, Capital Trust
17 has been benefited and AP Southwest deprived.

18 58. Upon information and belief, Defendant Creighton and Defendant
19 Kennedy have been personally enriched by the unlawful retention of AP Southwest's
20 funds.

21 59. The Capital Trust Defendants' conduct has unjustly enriched them,
22 entitling AP Southwest to restitution of all funds improperly diverted as a consequence
23 of the Capital Trust Defendants' unlawful and fraudulent conduct.

24 60. The Capital Trust Defendants have acted, by failing to return AP
25 Southwest's investment or account for it, and continue to act, with an evil mind and with
26 an intent to injure AP Southwest, justifying an award of punitive damages.

1 WHEREFORE, AP Southwest prays that the Court grant the following relief:

2 A. Awarding AP Southwest its actual damages sustained as a result of the
3 Capital Trust Defendants' unlawful conduct, in an amount to be proven at trial, plus pre-
4 and post-judgment interest thereon, at the legal rate, until paid in full;

5 B. Awarding punitive damages to AP Southwest, in an amount necessary to
6 deter the Capital Trust Defendants and others from engaging in tortious conduct, plus
7 pre- and post-judgment interest thereon, at the legal rate, until paid in full;

8 C. Awarding AP Southwest its reasonable attorneys' fees and related non-
9 taxable expenses accrued and accruing herein, plus pre- and post-judgment interest at the
10 legal rate, until paid in full;

11 D. Awarding AP Southwest its costs accrued and accruing herein, plus pre-
12 and post-judgment interest thereon at the legal rate, until paid in full; and

13 E. Awarding AP Southwest such other and further relief as the Court deems
14 just and proper.

15 Plaintiff demands a jury on all issues triable of right by a jury pursuant to Fed. R.
16 Civ. P. 38.

17
18 RESPECTFULLY SUBMITTED this 6th day of February, 2013.

19
20 GREENBERG TRAUIG, LLP

21 By: /s/ Nicole M. Goodwin
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